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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/782,385	02/18/2004	Satoshi Mizutani	20050/0200895-US0	3573
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DARBY & DARBY P.C. P.O. BOX 770 Church Street Station New York, NY 10008-0770			EXAMINER BOGART, MICHAEL G	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/782,385	Applicant(s) MIZUTANI ET AL.	
	Examiner Michael G. Bogart	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 March 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,6,7,9-12,20,23,24 and 26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,6,7,9-12,20,23,24 and 26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 May 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

Claims 12 and 24 are objected to because of the following informalities:

Claim 12 depends from canceled claim 8.

Claim 24 recites the limitation "the other sheet" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Appropriate correction is required.

Claim Interpretation

For the purposes of examination in view of the prior art, claim 12 is interpreted as depending from claim 1.

Claim Rejections – 35 USC § 103

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. § 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out

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the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. § 103(c) and potential 35 U.S.C. § 102(e), (f) or (g) prior art under 35 U.S.C. § 103(a).

Claims 1, 6, 7, 9, 12, 20, 23, 24 and 26 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Champaigne, Jr. (US 3,665,923; hereinafter: "Champaigne").

Regarding claim 1, Champaigne teaches an interlabial pad comprising:

a surface side sheet (14) having a permeable property for liquid;

a plurality of sheet pieces (14, 20) forming a back face side sheet and including a sheet piece having one end that overlaps another sheet piece;

an absorbent body (12) capable of absorbing liquid and enclosed between the surface side sheet (14) and the back face side sheet (14, 20); and

a junction joining the surface side sheet (14) and the back face side sheet (14, 20) at a peripheral edge of the absorbent body (12);

at least one seam part (15) formed by overlapping the plurality of sheet pieces over one another, the seam part (15) including:

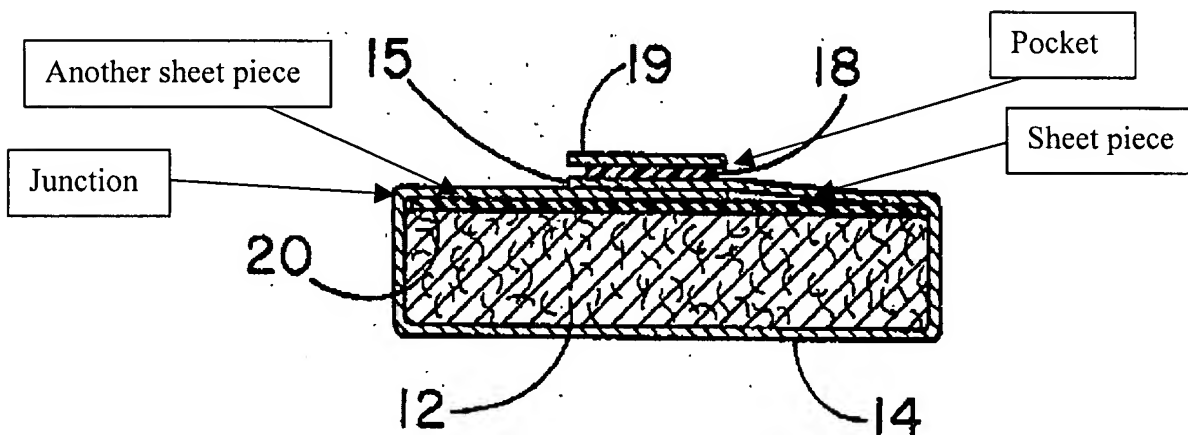
a longitudinal seam part (15) extending in a longitudinal direction of the interlabial pad, crossing over the back face side sheet (14, 20) from an edge (16) to another edge (17) of the back face side sheet (14, 20), and

an adhesive agent applied between the sheet pieces at the longitudinal seam part (15) along the longitudinal central line, wherein the sheet piece, which overlaps the other sheet piece at the longitudinal seam part (15) and which covers a side closer to a longitudinal central line of the interlabial pad, is positioned at the absorbent body side of the back face side sheet (14, 20),

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and wherein the plurality of sheet pieces are each formed of either a water disintegrable material or a biodegradable material and overlap with each other to form the longitudinal seam part (15);
and

a mini-sheet piece (19) formed of either a water disintegrable material or a biodegradable material, the mini-sheet piece (19) adhering to the back face side sheet (14, 20) at the junction of the surface side sheet (14) and the back face side sheet (14, 20) and covering a portion of the back face side sheet (14, 20) to form a pocket between the mini-sheet piece (19) and the back face side sheet (14, 20), wherein a finger of a user may be inserted into the pocket for either applying the interlabial pad to be worn by the user or removing the interlabial pad from the user to be discarded (col. 2, lines 6-60)(see annotated figure 2, *infra*).

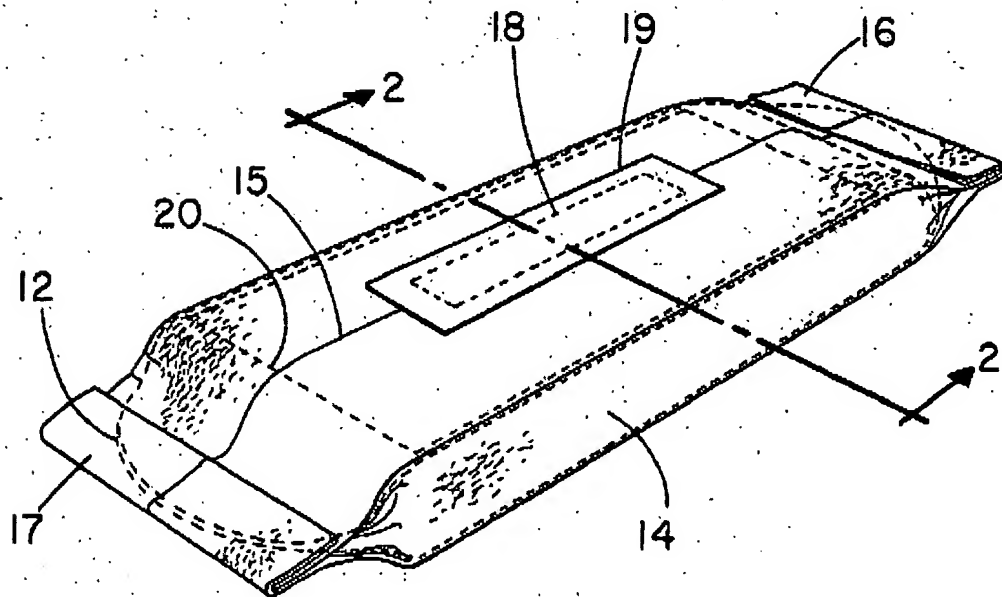


Regarding the functional limitations of the claims, e.g., where a finger of a user may be inserted, apparatus claims must be structurally distinguishable from the prior art. MPEP § 2114. A human finger may be inserted in the gap between elements (19) and (12) to manipulate the pad.

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Champaigne does not disclose expressly the claimed dimensions for the seam part. Mere changes in relative dimensions are not sufficient to patentably distinguish an invention over the prior art. In *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), *cert. denied*, 469 U.S. 830, 225 USPQ 232 (1984), the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device. MPEP § 2144.04.

Regarding claims 6, 7 and 23, Champaigne teaches a lateral seam part (16, 17)(see fig. 1, *infra*). Regarding the functional limitations of the claim, apparatus claims must be structurally distinguishable over the prior art. MPEP § 2114. The device of Champaigne, Jr. can be folded in the claimed manner.



Regarding claims 9 and 20, Champaigne teaches that the back face side sheet (14, 20) is made uneven at least at the surface opposite the absorbent body side (see annotated fig. 2 *infra*). It is noted that the sheet piece is transversely longer than the another sheet piece.

Regarding claim 12, Champaigne teaches at least one parting zone formed with the seam part (15) formed by the overlapping of the sheet pieces over one another (see fig. 2, *supra*).

Regarding claim 24, Champaigne teaches that the back face side sheet (14, 20) has two sheet pieces (see fig. 2, *supra*).

Regarding claim 26, Champaigne does not teach the specific ranges of values for the basis weight of the adhesive. Generally, differences in concentration or temperature will not support the patentability of subject matter encompassed by the prior art unless there is evidence indicating such concentration or temperature is critical. “[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation.” *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). A particular parameter must first be recognized as a result-effective variable, i.e., a variable which achieves a recognized result, before the determination of the optimum or workable ranges of said variable might be characterized as routine experimentation. *In re Antonie*, 559 F.2d 618, 195 USPQ 6 (CCPA 1977).

One of ordinary skill in the art would have recognized that increasing the basis weight of adhesive would provide for increased adhesion while slowing dispersion in water.

Claims 10 and 11 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Champaigne as applied to claims 1, 6, 7, 9, 12, 20, 23, 24 and 26 above, and further in view of Osborn, III (WO 99/26573 A1; hereinafter “Osborn”).

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Champaigne does not disclose expressly the packaging sheet.

Osborn teaches a packaging body (50) for a sanitary pad (20),
comprising:

a packaging sheet (68); and

a sanitary pad (20) covered by the packaging sheet (68);

wherein the packaging sheet (68) is provided with a continuous or discontinuous parting zone that is parted by actions of water, along which the packaging sheet (68) is separated into a plurality of small sheet piece when water after the packaging sheet is discarded in the toilet (page 19, line 20-page 21, line 23)(see fig. 5).

At the time of the invention, it would have been obvious to one of ordinary skill in the art to use the packaging of Osborn to package the pad of Champaigne in order to provide packaging that is known in the art to be suitable for that purpose.

Regarding the functional limitations, e.g., how the back side sheet disperses after placement in a toilet, apparatus claims must be structurally distinguishable over the prior art. MPEP § 2114. Osborn discloses packaging that can optionally be constructed of a dissolvable material. Even if the packaging is not torn open, it will eventually dissolve, even if this not an intended use of the disclosure.

Regarding claim 11, Osborn teaches that the packaging sheet is a liquid impermeable sheet (e.g., thermoplastic film) with an impermeable property against liquid (page 19, lines 20-31).

Response to Arguments

Applicant's arguments filed 05 March 2007 have been fully considered but they are not persuasive.

Applicants assert that Champaigne fails to disclose or otherwise suggest that a surface side sheet and back face side sheet are joined in a junction at a peripheral edge of the claimed absorbent and the interlabial pad further includes a mini-sheet piece adhering to the back face side sheet at the junction of the surface side sheet and the back face side sheet and covering a portion of the back face side sheet to form a pocket between the mini-sheet piece and the back face side sheet.

This argument is not persuasive, because as detailed supra, Champaigne teaches the peripheral junction between the surface side sheet (14) and back face side sheet (14, 20)(see annotated figure 2, supra), and the mini sheet piece (19) adhered (18) to the back face side sheet (14, 20) to form a pocket (see gap between elements (19) and (14) in figure 2, supra).

Applicants assert that Champaigne's surface side sheet and back face side sheet are not joined in a junction at a peripheral edge of the absorbent body. This argument is not persuasive because element (14) joins element (20) at and between the side edges of the article, that is, the entire impervious back side/garment side (14, 20) of the article (see figure 2, supra). The mini-sheet piece (19) is adhered (18) to this back side (14, 20).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Bogart whose telephone number is (571) 272-4933.

In the event the examiner is not available, the Examiner's supervisor, Tatyana Zalukaeva may be reached at phone number (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300 for formal communications. For informal communications, the direct fax to the Examiner is (571) 273-4933.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-3700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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A handwritten signature in black ink, appearing to read 'MB', with a long horizontal stroke extending to the right.

Michael Bogart

25 May 2007

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

A handwritten signature in black ink, appearing to read 'T. Zalukaeva', with a long horizontal stroke extending to the right.